

FCC MAIL SECTION

Before the
JUN 16 1995 Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY
MM Docket No. 94-125

In the Matter of

Amendment of Section 73.202(b). RM-8534
Table of Allotments, RM-8575
FM Broadcast Stations.
(Fredericksburg, Helotes and
Castroville, Texas)¹

REPORT AND ORDER
(Proceeding Terminated)

Adopted: June 8, 1995;

Released: June 16, 1995

By the Chief, Allocations Branch:

1. At the request of October Communications Group, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 9 FCC Rcd 6471 (1994), seeking comments on the proposed reallocation of Channel 266C from Fredericksburg to Helotes, Texas, and the modification of Station KONO-FM's license to specify Helotes as its community of license. Petitioner filed supporting comments and reply comments. In addition, petitioner submitted a contingent counterproposal proposing the reallocation of Channel 266C to Castroville, Texas.² No other comments were received.

2. As stated in the *Notice*, Helotes, an incorporated community with a population of 1,535 persons,³ has its own police and fire departments, libraries, religious institutions, non-profit organizations such as 4-H, Lions, Lioness and Optimist Clubs, as well as numerous local business. Further, Channel 266C can be allotted to Helotes at Station KONO-FM's present transmitter site in compliance with the Commission's minimum distance separation requirements. We recognized that the allotment of Channel 266C would provide Helotes with its first local transmission service. However, for several reasons, we questioned whether the reallocation would result in a preferential arrangement of allotments. First, removing Channel 266C from Fredericksburg would deprive the substantially larger community of 6,934 persons, and county seat, of its sole local FM transmission service. Secondly, while neither Fredericksburg nor Helotes are located within an Urbanized Area, we noted that Helotes is within the Rand McNally San Antonio Metropolitan Area, is closer to San

Antonio and is considered to be already well served with at least five aural reception services. Finally, we stated that since Station KONO-FM already provides Helotes with a 70 dBu city-grade signal and no change in transmitter site is contemplated by the petitioner, there would be no improvement in Station KONO-FM's facilities or coverage area. However, even though we were unable to reach a tentative conclusion that the proposal would result in a preferential arrangement of allotments, we issued the *Notice* to provide the petitioner with an opportunity to provide any additional information in support of its proposal.

3. In response, petitioner takes exception to the Commission's citation of the decision in *Van Wert, Ohio and Monroeville, Indiana* ("Van Wert")⁴ as support for our concerns about the instant reallocation from Fredericksburg to Helotes. Petitioner claims that the facts in *Van Wert, supra*, are "starkly different." First, Van Wert had no nighttime transmission service except from the station seeking reallocation while Fredericksburg will still receive such service from Station KNAF(FM). Secondly, unlike Van Wert, Fredericksburg also has a television allotment. Next, petitioner states that there is no evidence in the *Van Wert* decision that the community has any "dynamic local character" while Helotes is shown to clearly be a growing, vibrant community with an "unusually wide array" of civic attributes. Finally, it states that Helotes is considerably removed from San Antonio and twice as close in population to Fredericksburg (1: 4) as Monroeville is to Van Wert (1: 8).

4. Petitioner further states that recent events have resulted in an increase in reception service to Fredericksburg. Specifically, it states that Station KFAN(FM), Channel 300C2, although licensed to Johnson City, Texas, has established its main studio in Fredericksburg and provides the community with 70 dBu service. The level of local service will also increase, according to petitioner, when TV Channel 2 goes on the air.⁵ It acknowledges that Helotes has reception service from Fredericksburg Stations KONO-FM and KNAF(AM) but points out that it presently has no local transmission service. Therefore, it insists that the allotment of Channel 266C to Helotes would result in a preferential arrangement of allotments by furthering the allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.⁶

5. Petitioner reiterates that Helotes is a community for allotment purposes, citing the fact that it is incorporated, is included in the 1990 U.S. Census and has various commercial enterprises and civic organizations. Petitioner also states that Helotes attracts many visitors, as the home of the Helotes Cornyval, the Optimist Club's Classy Chassis Car Show and the John Floore County Store, a country-music and dance hall which accommodates about 1,500 people. In addition, it states that Helotes has a weekly newspaper, a separate telephone directory, post office and zip code. While it acknowledges that most of Helotes' work force

¹ The community of Castroville has been added to the caption.

² Public Notice of the filing of the counterproposal was given on January 18, 1995, Report No. 2052.

³ Population figures are taken from the 1990 U.S. Census.

⁴ See 7 FCC Rcd 6519 (1992).

⁵ In considering whether to reallocate an FM station, the Commission looks only at aural stations, not television stations. Therefore, while Fredericksburg may enjoy local television ser-

vice some time in the future, it is not relevant to this proceeding. See 5 FCC Rcd 7094 at 7097 (1994).

⁶ See 90 FCC 2d 88 (1982). The allotment priorities are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. The provision of second aural service and first local service are treated co-equally.

commutes elsewhere, in particular to military bases. It argues that this is true of many towns which already have local transmission service.

6. Petitioner recognizes that the Commission has, where circumstances warrant, the right to flexibility in allotment proceedings. Further, it also recognizes the Commission's stated belief that the public has a legitimate expectation that existing service will continue and that this factor will be weighed independently against the service benefits which may occur from the reallocation of a channel from one community to another. In fact, petitioner contends that the residents of Helotes also have the right to expect that local service, once commenced, will continue. It states that daytime-only AM Station KXAM, on 1440 kHz, was licensed to Helotes but because of market forces hostile to AM stations, asked the Commission in 1988 to cancel its license. Therefore, petitioner contends that it seeks to "fulfill Helotes's legitimate expectation and to restore local service to the town via FM, which will ensure the transmission service's long-term viability." (footnote omitted.) In this regard, petitioner states that the reallocation of an existing station to Helotes is the only way in which the residents can resume local transmission service. The Commission no longer permits the initiation of new daytime-only AM stations like KXAM and no new full time AM or FM station can be allotted to Helotes in compliance with the Commission's licensing standards. Petitioner states that it intends to fulfill its responsibilities as a Helotes licensee by airing a weekly 30-minute public affairs program addressing the "unique" issues facing Helotes as well as a minimum of five separate public-service campaigns monthly to provide exposure of charitable and civic activities within the community.

7. Petitioner argues that the fact that Helotes is closer to San Antonio than is Fredericksburg is irrelevant. Neither community is within the San Antonio Urbanized Area and, although raised in the *Notice*, petitioner states that the Commission does not consider whether a community is located within a Rand McNally Metropolitan Area to be significant in proceedings involving the change of a station's community of license.

8. Petitioner states that while it firmly believes that the public interest would best be served by the relicensing of Station KONO-FM to Helotes, it contingently proposes that the station be relicensed to Castroville instead. It states that Castroville has many of the same attributes and need for local transmission service as Helotes. Castroville, with a population of 1,821 persons, is an incorporated community, with its own public service organizations, churches, public elementary and secondary schools as well as a parochial elementary school. It is governed by a mayor and city council, which has and exercises local taxing authority and its own police and volunteer fire department. In addition, petitioner points out that Castroville has a municipal airport, commercial bus service, newspaper, banks, its own utility supply systems, telephone directory and chamber of commerce. Petitioner submits that a total of 541 people work in Castroville. Petitioner states that Channel 266C can be allotted to Castroville in compliance with the Commission's minimum distance separation requirements from

its presently licensed transmitter site. Finally, it states that it will apply for Channel 266C whether licensed to Helotes or Castroville.

DISCUSSION

9. The proposed reallocation of Channel 266C from Fredericksburg to Helotes or Castroville was filed pursuant to the provisions of Section 1.420(i) of our Rules, which permits, in limited circumstances, the reallocation of a channel from one community to another and the modification of a station's license to reflect the new community, without competition from other applicants for the newly allotted channel. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification of License R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Modification of License MO&O"). Under *Modification of License R&O* and the subsequent *Modification of License MO&O*, the reallocation must serve the Commission's allotment policies and priorities as set forth in *Revision of FM Assignment Policies and Procedures*, *supra*. Thus, we must evaluate the comparative merits of retaining Channel 266C at Fredericksburg versus allotting the channel to either Helotes or Castroville.

10. The allotment of Channel 266C to either Helotes or Castroville would further priority (3), the provision of a first local aural service while the channel's allotment to Fredericksburg would trigger priority (4), other public interest matters, since the community already has local aural service from daytime-only Station KNAF(AM).⁷ While the allotment of Channel 266C to either Helotes or Castroville could fulfill the higher priority of providing a first local transmission service, in cases such as this which involve the removal of an existing service, the Commission must also take into account the effect caused by the deletion of an existing service. As stated in *Modification of License MO&O*, *supra*,

Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change. (footnote omitted)

* * * * *

Consistent with precedent, we do not intend to apply the first local service preference of our allotment criteria blindly. We recognize that an inflexible application of that preference, without further analysis, could consistently result in our finding that a reallocation leading to first local service for a suburb

⁷ KNAF(AM) operates on 910 kHz with 1000 watts daytime and 174 watts nighttime. Petitioner states that the station's daytime 5 mV/m groundwave contour and nighttime interference-free contour fully encompass Fredericksburg. However,

with a nighttime power of less than 250 watts nighttime, KNAF(AM) remains classified as a daytime-only station. See *Burlington, Iowa and Hamilton, Illinois*, 6 FCC Rcd 2458 (1991).

of a much larger adjacent metropolitan center justifies removing a local service from a more remote community. We wish to dispel any concern that our new rule would lead to such a result.

* * * * *

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, *regardless of whether the service removed constitutes a transmission service, a reception service, or both.*

5 FCC Rcd at 7096 - 7097 (emphasis added). Thus, the public interest benefits accruing from the provision of a first local service must be significant enough to outweigh the loss of a transmission service to the original community of license.

11. In this case, we cannot find that the reallocation of Channel 266C to either Helotes or Castroville provides a public interest benefit significant enough to override the loss of Fredericksburg's sole local FM transmission service. As stated above, we will not blindly apply the first local service preference. Therefore, we have examined the three communities with respect to their relative locations, populations and reception services and find that both Helotes and Castroville are significantly smaller in population to Fredericksburg, located much closer to the San Antonio Urbanized Area and have a far greater number of reception services. Helotes and Castroville are located 1.2 kilometers (0.75 miles) and 14.8 kilometers (9.2 miles), respectively, from the San Antonio Urbanized Area while Fredericksburg is 75 kilometers (47 miles) from the Urbanized Area. Likewise, both Helotes, with a population of 1,535 persons, and Castroville, with a population of 2,159 persons, are only one-fourth to one-third as populous as Fredericksburg, with a population of 6,934 persons. Next, Helotes enjoys full-time reception service from twenty-two radio stations, Castroville receives such service from twenty radio stations while Fredericksburg, the most populous community and most distant from the San Antonio Urbanized Area receives full time aural service from only seven stations. Finally, we are told that most of Helotes work force commutes elsewhere, especially to military bases in the San Antonio area, and a total of 541 people work in Castroville. Since this figure represents the total work force in Castroville, it does not represent the number of Castroville residents who live and work in the community. No employment figures are given for Fredericksburg but as

the county seat and its location considerably more distant from the Urbanized Area, we believe that it is reasonable to presume that a significant number of their residents also work in Fredericksburg.

12. Based on the characteristics of the three communities, we cannot find that the public interest would be served by depriving the residents of Fredericksburg of their sole local FM transmission service, a service which has been existence for many years. While it is unfortunate that Helotes' AM station is no longer on the air, there is nothing in the Commission's change of community or other rules which confers a right to the restoration of a previous service to such communities by the deletion of an existing service from another community. We disagree with the petitioner that the situation in this proceeding differs significantly from that present in *Van Wert, supra*. In *Van Wert, supra*, petitioner requested the reallocation of Channel 255B from Van Wert to Monroeville and the modification of Station WBYR(FM)'s license accordingly. Like the situation here, the allotment to Monroeville would have provided the community with its first local service. Monroeville is located close to but outside the Fort Wayne Urbanized Area being 27.9 kilometers (17.3 miles) from the center of the urbanized area. However, the reallocation would have deleted Van Wert's sole local FM service, its only local aural competitive voice, and its only nighttime transmission service.⁸ Monroeville is also significantly smaller than Van Wert, having only approximately one-seventh the population but with substantial reception services from stations licensed to Fort Wayne and other nearby communities. Finally, as is the case here, the Van Wert petitioner requested no change in Station WBYR(FM)'s transmitter site as the station already provided Monroeville with a 70 dBu signal.⁹ The Commission found:

The provision of a first local transmission service to Monroeville, a community one-seventh the size of Van Wert, requires the loss of a local transmission service by the residents of Van Wert. [footnote omitted.] The loss of Station WBYR(FM), as a Van Wert transmission service, would remove that community's only local nighttime service as well as its sole local competitive voice. [footnote omitted.] While this disruption may be warranted if there were sufficient public interest benefits, we find that insufficient benefits are present here. There would be no improvement in the reception service already provided by the station, since petitioner has not stated an intention to move to a site different from that specified in its outstanding license. Indeed, petitioner has presented no evidence suggesting that Station KBYR(FM) is unable to provide Monroeville with

⁸ Both the Fredericksburg and Van Wert AM stations are authorized nighttime powers of under 250 watts. Thus, they both remain licensed as daytime-only stations.

⁹ We recognize that in *Elizabeth City, North Carolina and Chesapeake, Virginia* ("Elizabeth City"), 9 FCC Rcd 3586 (1994), the Commission granted a request to reallocate a channel and modify a station's community of license where no change in transmitter site was involved. However, the situation in this proceeding is not analogous to that in *Elizabeth City*. In *Elizabeth City*, the Commission reallocated Channel 229C from Elizabeth City to Chesapeake, as the community's third local aural transmission service, and modified Station WKOC-FM's

license accordingly, even though there was no change in transmitter site. Unlike the situation here, Elizabeth City, with a substantially smaller population (14,292 persons) received local transmission service from five AM and FM stations while Chesapeake (151,976 persons) received local transmission service from only two aural stations. Thus, the removal of Station WKOC-FM's channel would still leave Elizabeth City with four local aural transmission services. Here, we would be removing Fredericksburg's sole local FM transmission service in order to provide the substantially smaller communities of either Helotes or Castroville with their first local aural transmission service.

any specialized service at this time, as the station currently provides Monroeville with a 70 dBu city-grade signal.

See 7 FCC Rcd at 6520. Even if this case is argued to be less stark than *Van Wert*, that does not compel a contrary result.

13. Accordingly, IT IS ORDERED. That the petition for rule making submitted by October Communications Group, Inc., to reallocate Channel 266C from Fredericksburg, Texas, to either Helotes (RM-8534) or Castroville (RM-8575), Texas, IS DENIED.

14. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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